



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	05/06/14	Bill No:	Senate Bill 1319
Tax Program:	Oil Spill Prevention and Administration Fee Oil Spill Response Fee	Author:	Pavley
Sponsor:	Author	Code Sections:	GC 8670.40 and 8670.48
Related Bills:		Effective Date:	01/01/15

This analysis is limited to the provisions which impact the Board of Equalization (BOE).

BILL SUMMARY

Among its provisions, this bill amends the **oil spill prevention and administration fee** (prevention fee) program to:

- Maintain the fee rate cap at \$0.065 per barrel from January 1, 2015 through December 31, 2015;
- Include crude oil or petroleum products received at a marine terminal by any mode of delivery;
- Specify that the fee paid by a pipeline operator applies to crude oil originating from a production facility in waters of the state;
- Extend the prevention fee to the owner of crude oil at the time it is received at a refinery; and
- Require every oil refinery, marine terminal, and pipeline operator to register with the BOE.

Other provisions of this bill amend the **oil spill response fee** (response fee) program to:

- Clarify that the marine terminal operator collects the per-barrel fee from the owner of the petroleum products;
- Specify that the fee paid by a pipeline operator applies to petroleum products transported by pipeline in waters of the state; and
- Delete the fee exemption for “independent crude oil producers.”

ANALYSIS

CURRENT LAW

Oil Spill Prevention and Administration Fee. Existing law¹ imposes a prevention fee upon crude oil received at a marine terminal from within or outside the state, and upon petroleum products received at a marine terminal from outside the state. Marine terminal operators collect the fee from the owners of the crude oil or petroleum product based on each barrel the terminal receives from a vessel operating in, through, or across the state's marine waters. Additionally, a pipeline operator pays the fee for each barrel of crude oil that originates from

¹ Government Code (GC) Section 8670.40.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

marine-based production facilities and is transported across, under, or through the state's marine waters by pipeline.

The current fee rate cap is:

Rate Period	Rate Cap
01/01/12 – 12/31/14	\$0.065
01/01/15 – ongoing	\$0.05

As a Governor's appointee in the Department of Fish and Wildlife, the Administrator annually sets the fee rate. The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

Marine terminal and pipeline operators pay the fee monthly to the BOE. Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies. However, the fee does not fund oil spill response activities.

Oil Spill Response Fee.² Existing law³ imposes a response fee, not to exceed twenty-five cents (\$0.25), upon the owner of petroleum products for each barrel of petroleum products received at a marine terminal within this state by means of a vessel from a point of origin outside this state. It is also imposed upon a pipeline operator for each barrel of petroleum product transported into the state by pipeline, and upon a refinery operator for each barrel of crude oil⁴ received at a refinery within the state. Marine terminal operators collect the fee from the owners of the petroleum product at the time the petroleum products are received at the marine terminal from a vessel that originated outside this state. Both the pipeline and refinery operator pay the fee to the BOE.

The Administrator, in consultation with the BOE sets the amount of the fee.⁵ The fee is collected when the Administrator determines collection is necessary for the following specified reasons:

- The fund amounts are less than or equal to 95% of the specified designated amount;⁶
- Additional money is required to pay for specified purposes, generally related to the costs of response and cleanup of oil spills into marine waters; or
- The revenues are necessary to repay a draw upon security or borrowed money.⁷

² In general, certain marine terminal operators, pipeline operators, and refiners pay a uniform oil spill response fee, in an amount not exceeding \$0.25 per barrel of petroleum product or crude oil. The fee is only collected when the funds in the Oil Spill Response Trust Fund (Fund) fall below the designated amount.

³ GC Section 8670.48

⁴ The specified fee shall not be imposed by a refiner on crude oil produced by an independent crude oil producer.

⁵ The Administrator shall not set the amount of the fee at less than \$0.25, unless a lower amount will cause the fund to reach its designated amount within four months. The fee may also not be less than \$0.25 if the Administrator or the Treasurer has drawn upon security or borrowed money and those borrowings remain unpaid, unless the Treasurer certifies that the funds are not necessary for specified purposes.

⁶ The designated amount, currently at \$109,750,000, is specified in Revenue and Taxation Code (RTC) Section 46012. The designated amount is comprised of two components, \$54,875,000 in cash, and \$54,875,000 in financial security. Amounts held in the Fund may accumulate up to the designated amount.

⁷ GC Section 8670.48.3, specifies that, under specified conditions, the Administrator is not obligated to resume collection of the response fee if a loan or other transfer from the Fund to the General Fund reduces the balance of the Fund to less than 95% of the designated amount. In general, the specified conditions are that a loan from the Fund is required, and that the loan be repaid by June 30, 2014.

The Administrator, in consultation with the BOE and with the approval of the Treasurer, may direct the BOE to cease collection when it is determined that further collection is not necessary.

An additional response fee shall be imposed in any month when the total cumulative year-to-date barrels of crude oil transported outside the state by means of vessel or pipeline exceed 6% by volume the total barrels of crude oil and petroleum products subject to the fee as described above for the prior calendar year. The additional response fee is imposed on a marine terminal operator and a pipeline operator for each barrel of crude oil that is transported from within this state to a destination outside this state, either by marine vessel or by pipeline, respectively.⁸

Moreover, the Administrator has the authority⁹ to raise the \$0.25 response fee to a maximum of one dollar (\$1.00) per barrel, provided the fee increase is in maximum increments of \$0.25 and not more frequently than once every three months. The Administrator may only raise the fee by finding all of the following:

- Demands for expenditures from the Oil Spill Response Trust Fund (Fund) have depleted or exhausted or will deplete or exhaust the Fund;
- The Governor requests that the Treasurer borrow money and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet anticipated demands on the fund, or that the fee is insufficient to repay and secure draws against the financial security obtained by the Treasurer; and
- Failure to raise the fee will result in unmet or unpaid authorized contracts or expenditures related to any borrowing or financial security.

All response fees collected are deposited in the Fund.

PROPOSED LAW

Oil Spill Prevention and Administration Fee. This bill amends the prevention fee provisions as follows:

- Maintains the fee rate cap at \$0.065 per barrel, beginning January 1, 2015, and ending December 31, 2015.
- Includes crude oil received from within or outside the state or petroleum products received from outside the state at a marine terminal by any mode of delivery.
- Specifies that the fee imposed on a pipeline operator applies to crude oil originating from a production facility in waters of the state.
- Extends the prevention fee to be imposed on the owner of crude oil at the time it is received at a refinery.
- Requires every oil refinery, marine terminal, and pipeline operator to register with the BOE.

Fee Rate Cap. This bill maintains the \$0.065 fee rate cap through calendar year 2015 (\$0.015 above the currently scheduled rate decrease), and after that date, the fee would be determined by the Administrator to pay the reasonable regulatory costs.

⁸ Generally speaking, the additional response fee takes effect when the outgoing barrels of crude oil and petroleum products exceed the incoming barrels of crude oil and petroleum products.

⁹ GC Section 8670.48.5

Marine Terminal Receipts. In general, this bill expands the fee so that collection would be required by the marine terminal operator from the owner of the crude oil or petroleum products, based on each barrel of crude oil received from within or outside the state, or petroleum products received from outside the state at a marine terminal by any mode of delivery – not just from vessels operating in marine waters.

Pipeline Operator. This bill specifies that the fee paid by a pipeline operator applies to crude oil originating from a production facility in waters of the state and transported by pipeline operating across, under, or through waters of the state – not just marine waters.

Refinery Operator. This bill imposes the prevention fee on the owner of crude oil at the time it is received at a refinery within the state by any mode of transport, whether from within or outside the state.

Registration with BOE. This bill clarifies that refinery, marine terminal, and pipeline operators must register with the BOE, consistent with the current prevention fee law.¹⁰

Oil Spill Response Fee. This bill amends the response fee, as follows:

- Clarifies that the marine terminal operator collects the per-barrel fee from the owner of the petroleum products.
- Specifies that the fee paid by a pipeline operator applies to petroleum products transported by pipeline in waters of the state.
- Deletes the fee exemption for “independent crude oil producers.”
- Requires a marine terminal operator to pay the fee for each barrel of crude oil transported by a vessel, as specified.
- States that the use of funds includes response to an imminent threat of a spill.

Marine Terminal Collects. Current law imposes the fee upon the owner of petroleum products for each barrel of petroleum products received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The owner of the petroleum products is liable for the fee until it has been paid to the state, except that payment to a registered marine terminal operator relieves the owner of liability. This bill clarifies that the marine terminal operator shall primarily collect and remit the fees to the BOE.

Pipeline Operator. This bill specifies that the fee paid by a pipeline operator applies to petroleum products transported by pipeline in waters of the state – not just marine waters.

Independent Crude Oil Operators Exemption. Current law does not impose the fee on crude oil produced by an independent oil producer. An “independent crude oil producer is defined as a crude oil producer who does not refine the oil into a product, and who does not own a retail gasoline marketing facility.” This bill deletes this exemption.

Marine Terminal Receipts. Current provisions impose an additional response fee on a marine terminal operator for each barrel of crude oil that is transported from within this state to a destination outside this state by marine vessel. This bill specifies that the fee paid by the marine terminal operator applies to each barrel of crude oil that is transported from within this state to a destination outside this state by a vessel – not just a marine vessel.

Use of Funds. Current statutes specify several authorized uses of the response funds. This bill states that the use of funds includes response to an imminent threat of a spill.

¹⁰ The Oil Spill Prevention and Administration Fee is administered and collected by the Board of Equalization (BOE) consistent with Part 24 (commencing with Section 46001) of Division 2 of the RTC. Article 2, Section 46101 of the RTC, requires these same fee payers to register with the BOE.

This bill is effective January 1, 2015.

BACKGROUND

In 1990, two bills¹¹ enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added several provisions¹² to address marine oil spill prevention, administration, and response activities in California.

In 2010, the Legislature passed Assembly Bill 234 (Huffman), which would have increased the maximum amount of the fee to \$0.06. Governor Schwarzenegger vetoed the bill.

Assembly Bill 1112 (Ch. 583, Stats. 2011) temporarily increased the fee cap from \$0.05 to \$0.065, from January 1, 2012, to January 1, 2015. Thereafter, the fee rate cap decreases to \$0.05.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author and is intended to expand the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to all waters of the state and all significant modes of oil transportation.
- 2. This bill deletes the prevention fee rate cap after December 31, 2015.** As previously explained, the Administrator sets the fee rate in accordance with an annual plan. Currently, the BOE administers and collects this fee, set at the maximum of \$0.065. Current statute specifies a fee rate cap of \$0.05 on and after January 1, 2015. This bill instead maintains the fee rate cap at \$0.065 from January 1, 2015 to December 31, 2015, and deletes the fee rate cap after that date. The Administrator will continue to set the rate, as specified, and will continue to timely notify the BOE of the adjusted fee rate.
- 3. Expansion of the prevention fee to crude oil received at refineries within the state.** This bill expands the prevention fee to crude oil received at a refinery that has not already been assessed a fee at the marine terminal or the pipeline transporting crude through state waters. According to the author's Fact Sheet, the volume of crude oil transported by rail is expected to significantly increase in the next few years. Because the expansion of the fee to the refinery is based on crude oil barrels received at the refinery by any method of transport, whether from within or outside the state, those crude oil barrels delivered by rail into a refinery in this state would be subject to the fee. As specified in the bill, the refinery operator would be required to register with the BOE, collect the fee from the owner of the oil, file a return and pay the fee to the BOE on a monthly basis.
- 4. The response fee may not be collected.** Although this bill proposes several amendments to the response fee provisions, there are no changes to the designated amount, particularly the cash component.¹³ Such a change would trigger the collection of the response fee. Additionally, the bill amends a provision related to a loan repayment requirement,¹⁴ which extends the loan repayment date from June 30, 2014, to June 30, 2017.¹⁵ The Governor's

¹¹ Senate Bill 2040 (Chapter 1248, Keene) added and Senate Bill 7 (Chapter 10, Keene) amended GC Section 8670.40 to impose the Oil Spill Prevention and Administration Fee.

¹² GC (§8670.1 et seq.), Public Resources Code (§8750 et seq.), and RTC (§46001 et seq.).

¹³ As explained previously, the designated amount in the Fund may accumulate up to \$109,750,000, which is comprised of \$54,875,000 in cash, and \$54,875,000 in financial security. In November 2007, shortly after the [Cosco Busan oil spill](#) in the Bay Area, the Pooled Money Investment Board authorized a line-of-credit of \$54,875,000, that could be drawn upon in the event there were insufficient funds from the responsible party and from the federal oil spill trust fund.

¹⁴ GC Section 8670.48.3

¹⁵ According to the 2012-13 Budget, a loan of \$40 million was made from the Fund to the General Fund. It appears the General Fund loan was to be repaid by June 30, 2014.

2014-15 proposed Natural Resources, Oil Spill Response, [trailer bill language](#), and the [proposed budget](#) seems to suggest that the loan from the Fund will not be repaid until June 30, 2017.¹⁶ Therefore, based on discussions with the author's office, and those previously cited documents, BOE staff does not foresee a condition that would trigger collection of the response fee.

- 5. Suggested technical amendments.** BOE staff will work with the author's office to define terms and provide consistency in definitions between the Government Code and the Revenue and Taxation Code. BOE staff also suggests that the author clarify that the prevention fee is imposed only once on the same crude oil or petroleum product that may be received at a marine terminal or refinery, or transported by pipeline. Paragraph (4) of subdivision (b) of Section 8670.40 of this bill should be amended as follows:

(4) The fees shall be remitted to the ~~board~~ State Board of Equalization by the owner of the oil, the refinery, the terminal, or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a refinery or marine terminal, or transported by pipeline, during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has previously been collected by a refinery or marine terminal operator registered under this chapter or paid to the ~~board~~ State Board of Equalization with respect to the crude oil or petroleum product.

COST ESTIMATE

This bill makes several amendments to the prevention fee that will affect the BOE's administrative functions. The expansion of the prevention fee to crude oil received at a refinery within this state by any mode of transport, whether from within or outside the state, requires the BOE to identify and register new fee payers, substantially increases the complexity of audits, requires the BOE to research and obtain third party information to verify incoming crude oil receipts, revise returns, regulations, publications, and online information, as well as work with the Administrator to determine the appropriate revenue reporting needs. A cost estimate of this workload is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

It is our understanding that the extension of the prevention fee would apply primarily to crude oil being refined in California, but not currently subject to the fee. We believe that the assessment of refined petroleum products accounts for a relatively small portion of the total revenues related to the prevention fee.

The California Energy Commission publishes weekly data on crude petroleum input into refineries in California.¹⁷ Tabulations of these data show that in fiscal year 2012-13, 575.4 million barrels of crude oil came into California refineries. The BOE's *Annual Report* data indicates that the prevention fee revenues were \$31.337 million in fiscal year 2012-13. We assume these revenues are all derived from prevention fees imposed on crude oil. At a fee

¹⁶ The budget trailer bill also amends GC Section 8670.48.3, to extend the loan repayment date to June 30, 2017. The Governor's proposed budget indicates a fund balance for fiscal year 2014-15 that is consistent with a delayed repayment date.

¹⁷ Source: http://energyalmanac.ca.gov/petroleum/fuels_watch

rate of \$0.065 per barrel, the 2012-13 revenues convert to approximately 482.1 million barrels of crude oil ($31.337 / 0.065 = 482.1$).

The difference between fiscal year 2012-13 refinery input and crude oil on which a fee has been paid is 93.3 million barrels ($575.4 - 482.1 = 93.3$). At a fee rate of \$0.065 per barrel, the additional prevention fee revenues are estimated to be \$6.1 million.

Tabulations of the California Energy Commission data to an annual basis indicate that barrels of crude oil input changed little between 2012 and 2013. Therefore, we will assume no growth in barrels refined, and no growth in the associated prevention fee revenues occurs from 2012 to 2015. Although the amount of crude oil being refined is assumed to be the same, the sources of crude oil and the methods of delivery may change.

The California Energy Commission also publishes monthly data on rail shipments of crude oil into California.¹⁸ These data indicate that rail shipments have increased from about 1.1 million barrels in 2012 to 6.3 million barrels in 2013. The 2013 rail shipments account for about 7% of the 93.3 million of total 2012-13 barrels not subject to the prevention fee.

REVENUE SUMMARY

We estimate additional prevention fee revenues for calendar year 2015 to be about \$6.1 million.

Qualifying Remarks.

- The additional prevention fee revenue estimate is for crude oil receipts only, and it does not include revenues associated with refined petroleum products.
- As explained in the comment #4, there are no expected revenues attributable to the response fee.
- We believe that all crude oil coming into California is likely to be refined in some way. We assume no change in the quantity of oil input to refineries from that of fiscal year 2012-13.
- Revenues cannot be projected beyond 2015 because the assessment rate for 2016 and future years is unknown.
- If this legislation is not passed, the prevention fee rate will decline from \$0.065 per barrel to \$0.05 per barrel. Additionally, to the extent that rail shipments could displace marine shipments (in which case the fee is already assessed under current law), revenues would be lower.
- This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

Analysis prepared by:	John Cortez	916-445-6662	05/13/14
Revenue estimate by:	Joe Fitz	916-445-0840	
Contact:	Michele Pielsticker	916-322-2376	
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¹⁸ Source: http://energyalmanac.ca.gov/petroleum/statistics/2012_crude_by_rail.html